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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN VANSCHA MULDREW,

Defendant and Appellant.

E049512

(Super.Ct.No. FVI702304)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin,
Judge. Affirmed.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

On June 19, 2009, defendant and appellant Kevin Vansha Muldrew, represented by counsel, pled guilty to one count of identity theft (Pen. Code, § 530.5, subd. (a)),¹ and admitted that he had suffered a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). In return, the remaining charges and enhancement allegations were dismissed and defendant was sentenced to the stipulated term of four years in state prison with credit for time served. Defendant appeals from the judgment. His notice of appeal challenges the sentence or other matters occurring after the plea, the validity of the plea, and the representation he received.

I

FACTUAL AND PROCEDURAL BACKGROUND²

In April 2007, someone obtained a credit card from Chase Manhattan Bank (Chase) using an internet application process in the victim's name. The application listed a telephone number, listed to defendant, and an address in Victorville, California. The victim resided in Reno, Nevada, and informed a San Bernardino County Sheriff's Department deputy that he had never opened the credit card. Most of the purchases using the credit card were made in the high desert.

Following an investigation, the deputy determined defendant had made purchases using the fraudulent credit card. A search of defendant's person revealed the Chase credit card in his wallet. In addition, items purchased using the fraudulent credit card

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The factual background is taken from the probation officer's report.

were discovered during a search of defendant's residence. The total amount of loss sustained by Chase was \$4,449.37.

In a second amended information filed on May 18, 2009, defendant was charged with one count of identity theft (§ 530.5, subd. (a)) (count 1); one count of grand theft involving an access card (§ 484g, subd. (a)) (count 2); two counts of second degree commercial burglary (§ 459) (counts 3 & 5); two counts of false impersonation to obtain credit (§ 529) (counts 4 & 6); one count of receiving stolen property (§ 496, subd. (a)) (count 7); and one count of theft from an elder or dependent adult (§ 368, subd. (d)) (count 8). The information further alleged that defendant had suffered a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and three prior prison terms (§ 667.5, subd. (b)).

On June 19, 2009, defendant pled guilty to count 1 and admitted the prior strike conviction allegation. In exchange, the People agreed to dismiss the remaining counts and allegations. The plea also included a stipulated term of four years in state prison with credit for time served. The court reviewed the plea form with defendant and asked him whether he had placed his initials on the plea form, read the plea form, and understood the form. Defendant replied in the affirmative. The court also asked defendant whether his attorney had gone over the form carefully with him. Defendant again replied in the affirmative. Additionally, the court explained defendant's constitutional rights and asked him whether he understood those rights as they pertained to both the charges and the enhancement allegations. Defendant answered in the affirmative. The court found that defendant understood the plea form, his constitutional rights, the charges against him, and

the consequences of pleading guilty; that he intelligently and voluntarily waived his constitutional rights; and that his plea and admissions were free and voluntary.

On September 17, 2009, defendant filed a motion to withdraw his guilty plea, claiming that his attorney had “rushed” him into taking the deal, that his attorney had failed to communicate a two-year offer to him, and that his attorney was ineffective for failing to investigate the case or determine whether he had a prior strike conviction. The People thereafter filed their opposition.

A hearing on defendant’s motion to withdraw his guilty plea was held on September 29, 2009. Following the presentation of evidence in which defendant and his counsel testified, the trial court denied defendant’s motion to withdraw his guilty plea. Defendant was thereafter sentenced in accordance with the plea agreement (four years in state prison) and was awarded 537 total days of credit for time served.

On October 7, 2009, defendant filed a notice of appeal based on the sentence or other matters occurring after the plea and ineffective assistance of counsel. He also challenged the validity of the plea. His request for certificate of probable cause was denied.

II

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d

493], setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

In the absence of a certificate of probable cause, we may not consider the validity of the plea, whether the change of plea was knowingly, intelligently, or voluntarily made, or whether defendant was deprived of effective assistance of counsel. (§ 1237.5; see also *People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.)

In any event, defendant has failed to show that his counsel failed to act in a manner expected of other reasonably competent attorneys or that he had suffered prejudice as a result of his counsel's competency. (*People v. Wash* (1993) 6 Cal.4th 215, 269; *Strickland v. Washington* (1984) 466 U.S. 668, 688 [104 S.Ct. 2052, 80 L.Ed.2d 674].)

The record shows defendant was thoroughly advised of the rights being waived and the consequences of pleading guilty. There is substantial evidence to support the trial court's finding that the plea was knowing, intelligent, and voluntary. In addition, the sentence was authorized and was imposed in accordance with the terms of the plea agreement. (§§ 530.5, subd. (a), 667, subd. (e)(1), 1170.12, subd. (c)(1).)

We have completed our independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

RAMIREZ
P. J.

KING
J.